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TO: USPTO Group Art Unit 1774

02/17/2005

ATTN: Supervisory Patent Examiner Rena Dye

FAX # (703) 872-9523

Serial # 09/694,136

Filed 10/23/2000

Applicant: Straub, et al.

Docket 20003

MESSAGE: Dear SPE Dye:

Appellants respectfully request reinstatement of this docket to active status under 37 CFR 1.181 as fully set forth in the appended documents. Enclosed please find a Petition to the Commissioner, the original Notice of Appeal PTO/SB/31, Fee Transmittal Form PTO/SB/17, the Auto-Reply of Facsimile Transmission dated 06/07/2004, pages 6&7 of Capital One Year End Statement showing the payment for the Notice of Appeal on 06/08/2004 and the Appeal Brief on 07/28/2004 enclosed in boxes and the facsimile transmission from the Office of Finance-Receipts Accounting Division showing the error in recording the Notice of Appeal payment on 06/08/2004 and the proper recording of the payment for the Appeal Brief also enclosed in boxes drawn by the undersigned. Appellants believe that this facsimile transmission complies with the requirements set forth in 37CFR 1.6 and 1.8. Appellants believe that no fee is required for the following 37 CFR 1.181 petition, however, Appellants respectfully request prompt notification to rectify any error regarding payment for this petition. Appellants respectfully request reconsideration and allowance of the claims remaining in this application.

Respectfully submitted,


Richard L. Marsh, 31,637
Agent of Record

pages including this cover: 9

FROM: Richard L. Marsh

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Straub, et al. : Group Art Unit # 1774
Serial No. 09/694,136 : Examiner: Lawrence D. Ferguson
Filed: 23 October 2000 : Date: 17 February 2005
RCE filed: 21 February 2003 :
:
For: DECORATIVE MOLDING, :
DECORATIVE OVERLAYS AND :
FILMS THEREFOR AND METHODS :
AND APPARATUS FOR MAKING :
THE SAME :

The Honorable Commissioner of Patents and Trademarks

Mail Stop Petition

Washington, D.C. 20231

APPELLANTS' PETITION UNDER 37 CFR 1.181

Sir:

Supervisory Patent Examiner Rena Dye has kindly suggested that Appellants request withdrawal of abandonment of the above identified application Serial Number 09/694,136 and therefore, pursuant to 37 CFR 1.181, Appellants hereby respectfully request withdrawal of abandonment due to an Office error in properly applying payment for the Notice of Appeal filed on 06/07/2004.

In response to final office action of 03/05/2004, Applicants filed an AAF on 4/14/2004. The Examiner mailed an Advisory Action on 05/11/2004 stating that the AAF raises new issues and recourse is to file RCE or notice of appeal. As noted above, the current filing is already an RCE of the parent filed on October 23, 2000 and therefore, Applicants filed a Notice of Appeal with the requisite fee on 06/07/2004 within the 3 month time period of the Office Action of 03/05/2004. As provided in the statutes, the three month time period expires at the end of business on the next business day if the expiration date falls on a weekend day or holiday. Here the expiration date was 06/05/2004, a Saturday and thus the expiration date was 06/07/2004. Appellants include herewith

the original of the Notice of Appeal PTO/SB/31, the original of Fee Transmittal Form PTO/SB/17 and the original of the Auto-Reply Facsimile Transmission received by Appellants at 11:58:27 EST, 06/07/2004. These papers can be verified as originals by comparison to the papers of record in the Examiner's docket. The fee for the Notice of Appeal was charged to a credit card held by the undersigned Agent for Appellants on PTO 2038. As noted on the fax head, the Examiner was respectfully requested to apply the payment included with the transmission for the Notice of Appeal. A copy of the PTO 2038 is not included to avoid double charging for this fee amount as it will become abundantly clear that payment was properly made. Appellants aver that the serial number recorded on the PTO 2038 is proper and identical to the serial number shown on the above papers.

No action has been taken on the Appeal Brief until erroneous mailing of the Notice of Abandonment mailed by the Examiner on 01 February 2005. Accordingly, Applicants believe that the Examiner failed to enter the payment into the record as clearly shown in the record or if the fee was not received as now alleged by the Examiner, it is incumbent upon the Office, particularly the Examiner, to notify Applicants and provide Applicants opportunity to rectify the error. See MPEP 1205. Form paragraph 12.01 should have been immediately transmitted to Applicants.

It is clear that an error by the Office occurred by failing to apply the payment sent on 06/07/2004 to the proper application serial number. Applicants include herewith a portion of Agent's credit card year end statement for 2004 which shows that a fee of \$165.00 was charged on 06/08/2004 and another fee of \$165.00 was charged on 07/26/2004. These payments have been verified as noted on the June and July charges to Agent's account as received by the USPTO Office of Finance-Receipts Accounting Division Credit Card Transactions, however, the RAM report shows that the charge on 06/08/2004 was charged to a different file serial number, not the file serial number assigned to this application. To wit, the proper serial number for the instant case is 09/694,136 while the 06/08/2004 payment was charged to serial number 09/964,136. Note that the first two digits of the serial number were transposed by the Office when recording the payment. A copy of the RAM report follows the other papers in this petition.

As an error by the Office in recording the payment has been clearly established, Appellants respectfully request withdrawal of abandonment of the above serial number 09/694,136 and reinstatement to active status. Appellants also respectfully request prompt consideration of the Appeal and allowance of the claims presented. Additionally, Appellants respectfully request that the

application be allowed as originally filed as fully set forth in the petition to the Commissioner dated 27 March 2003. As set forth in the previous petition, Appellants further respectfully request resetting the patent term to include all days beyond 14 months that have been incurred in the delayed prosecution of this case, now totaling 1152 days.

Appellants believe that no fee is required for this petition to correct an error made by the Office, however, Appellants respectfully request prompt notification in case a fee is required in order to ensure that this petition is timely filed.

In view of the above, an Action on the merits of this application, as amended, and an allowance thereof is respectfully requested.

Respectfully submitted,

Herbert M. Straub, Martin D. Straub

and Timothy D. Ryan

Joint Inventors

Date: 17 February 2005

By


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